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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/786,908

02/25/2004

Christopher Hallam

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ADAMS INTELLECTUAL PROPERTY LAW, P.A.

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EXAMINER

ELKINS, GARY E

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

02/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/786,908	Applicant(s) HALLAM, CHRISTOPHER	
	Examiner Gary E. Elkins	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-13 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-13 and 15-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1, 2, 4-13 and 15-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No original disclosure can be found to support the newly added limitation that the first panel is not connected to the second panel along a major part of the fold line thereof. Since no description was provided of a "fold line" nor was the "fold line" shown in the drawings, no support can be found of the limitation related to the length of the "fold line" as is now claimed.

2. Claims 1, 2, 4-13 and 15-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation that the first panel is not connected to the second panel along a major part of the fold line thereof is unclear in scope since it cannot be ascertained what the length of the fold line is. To establish what is less than a major part of the fold line requires sufficient description of what constitutes the fold line being claimed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 6-13 and 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wasyluka. Wasyluka discloses a blank (fig. 1) formed by two panels (12, 13) connected by connecting parts or fold lines 24. The blank is capable of being folded along the connecting parts 24 into face to face relationship and is capable of forming engaging means as claimed. Each connecting part 24 (e.g. formed between 21, 21'; two connecting parts formed between 20, 20', etc.) extends along a part only of a mutual edge (A-A where the panels abut) of the first and second panels adjacent the engaging means as claimed. With respect to the newly added limitation that the first panel is not connected to the second panel along a major part of the fold line thereof, as best understood in view of paragraphs 1 and 2 above, an imaginary fold line with an infinite length is considered to extend through the connecting parts in Wasyluka and the length of the connections between the two panels is considered a minor part of the infinite length thereof. With respect to claims 6 and 17, note is made of the central connecting part 24 and the right end connecting part as viewed in fig. 1 which is about 1/5 of the circumference of the carton which the blank is capable of forming. Also, with respect to claims 9-12, note is made that each of the connecting parts is also considered to be a frangible tab insofar as claimed.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 5, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wasyluka. Wasyluka discloses all structure of the claimed blank except formation of the connecting part from about 3 cm to about 5 cm (cls. 4 and 15) or about 4 cm (cls. 5 and 16). It would have been obvious to make one of the connecting parts in Wasyluka with a length of about 3 to about 5 cm or about 4 cm as a mere selection of the size of the container. The ability to size a container to hold any reasonable size of content is within the level of skill in this art. See In re Rose, 105 USPQ 237 (CCPA 1955) and Gardiner v. TEC Systems, Inc., 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 225 USPQ 232 (1984).

Response to Arguments

7. Applicant's arguments filed 06 October 2006 have been fully considered but they are not persuasive.

As indicated in paragraph 4 above, the newly added limitation related to the length of an imaginary fold line is, as best understood, met by Wasyluka. The fold line being claimed is not described in the specification nor can it be seen that the fold line referred to includes any positive structure within the disclosed blank or carton. As such, the newly added limitation is considered new matter and indefinite in scope.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

/Gary E. Elkins/

18 February 2008

Primary Examiner, Art Unit 3782

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